

# PROPOSED RULEMAKINGS

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

[ 52 PA. CODE CH. 111 ]

[L-2010-2208332]

### Marketing and Sales Practices for the Retail Residential Energy Market

The Pennsylvania Public Utility Commission (Commission), on February 10, 2011, adopted a proposed rulemaking order which sets forth regulations on marketing strategies and sales techniques for electric generation suppliers and natural gas suppliers to ensure fairness and integrity in the competitive market and eliminate confusion on behalf of consumers.

#### *Executive Summary*

The Public Utility Commission's (PUC) Office of Competitive Market Oversight with industry working groups comprised of gas and electric utilities, suppliers, consumers and other interested parties developed draft interim guidelines on marketing and sales activities for electric generation suppliers (EGSs) and natural gas suppliers (NGSs). The draft guidelines were issued for public comment. After reviewing the comments, the interim guidelines were finalized on November 5, 2010. See Docket No. M-2010-2185981. The interim guidelines cover a wide range of topics and recommended best practices for direct (door-to-door) marketing, telemarketing and sales for the retail residential market. These interim guidelines will provide direction to EGSs and NGSs until final regulations are promulgated.

On February 14, 2011, the PUC issued a proposed regulation based on the interim guidelines that are applicable to the retail residential energy market. The proposed regulation, which is directed at EGSs and NGSs and their agents who provide sales and marketing support, is drafted to lessen customer confusion about suppliers and the sales process, and to ensure that a customer's account is not transferred to a supplier without his authorization. Specifically, the proposed regulation covers, inter alia, a supplier's liability for its agent; agent qualifications and criminal background investigations; agent training; agent compensation and discipline; and agent identification and misrepresentation. In addition, subjects relating to supplier/agent-customer interactions are addressed: customer authorization to transfer account; customer receipt of disclosure statement and right to rescind contract; consumer protection law; and customer complaints. Door-to-door (direct) marketing and telemarketing, two sales practices fairly new to Pennsylvania's retail energy market, are also addressed.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 11, 2011, the Commission submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees. In addition to submitting the proposed rulemaking, the Commission provided IRRC and will provide the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Meeting held  
February 10, 2011

*Commissioners Present:* James H. Cawley, Chairperson; Tyrone J. Christy, Vice Chairperson, statement follows; John F. Coleman, Jr.; Wayne E. Gardner; Robert F. Powelson

### ***Marketing and Sales Practices for the Retail Residential Energy Market; Doc. No. L-2010-2208332*** **Proposed Rulemaking Order**

#### *By the Commission:*

Before us for consideration is a proposed rulemaking order on marketing and sales practices for the retail residential energy market. The proposed regulations set forth herein are based on interim guidelines that were developed on the subject by the Pennsylvania Public Utility Commission's Office of Competitive Market Oversight (OCMO) as a result of meetings held with the working groups, CHARGE (Committee Handling Activities for Retail Growth in Electricity) and SEARCH (Stakeholders Exploring Avenues to Remove Competitive Hurdles).<sup>1</sup> As was the case with the interim guidelines, the proposed regulations will be applicable to both electric generation suppliers (EGSs) and natural gas suppliers (NGSs). Accordingly, with this order, we issue these proposed regulations for public comment.

#### **Discussion**

##### *Background*

With the expiration of the electric generation rate caps of PPL Electric Utilities in 2010, and those of the First Energy Companies (Metropolitan Edison Company, Pennsylvania Electric Company), PECO Energy Company and West Penn Power Company this past January, greater numbers of EGSs have entered, and will enter Pennsylvania's retail electric generation supply market. As a result, consumers are being exposed to unfamiliar marketing strategies and sales techniques. One particular sales technique, direct sales or door-to-door sales, has created confusion for some customers, who contacted this Commission with their concerns. To address these concerns, the OCMO and the CHARGE working groups were assigned the task of developing interim guidelines on marketing and sales activities in the retail electric market.

CHARGE took up the issue of third party marketing and sales support at its January 7, 2010, meeting. CHARGE continued to meet to discuss and review various drafts of the interim guidelines prepared by OCMO staff. The group met on January 22; February 4 and 18; March 4 and 18; April 08 and 29; May 13 and 27; and June 10. During the discussions, CHARGE asked OCMO

<sup>1</sup> CHARGE and SEARCH members included electric distribution companies, natural gas distribution companies, EGSs, NGSs, industry trade organizations, consumers, the Office of Consumer Advocate, and the Office of Small Business Advocate.

staff to consider expanding the draft marketing guidelines to include NGS marketers. On April 29, 2010, OCMO circulated the guidelines to SEARCH, seeking feedback from natural gas stakeholders about the feasibility of that suggestion. Joint meetings of CHARGE and SEARCH were held on May 13, 2010, and on June 7, 2010. On June 24, 2010, the group met on the final OCMO staff draft of the proposed interim guidelines.

On July 16, 2010, the Commission issued a Tentative Order with proposed interim guidelines on marketing and sales practices for EGSs and NGSs. *Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers*, Docket no. M-2010-2185981 (Interim Guidelines). The Tentative Order set forth 17 proposed interim guidelines and established a 30-day comment period and a subsequent 15-day reply comment period. Fifteen comments and seven reply comments were filed. After considering the comments, the Commission issued its final order on the Interim Guidelines on November 5, 2010.

#### *Proposed Rulemaking*

The proposed regulations are based on the Interim Guidelines. In each section below, the proposed regulation is described, the guideline that forms the basis for the proposed regulation is identified, and any significant differences between the interim guideline and the proposed regulation are highlighted. One major difference between the proposed regulations and the interim guidelines, which we note here, is the elimination of many of the references to existing Title 52 regulations with which suppliers are already required to comply.

#### *Section 111.1. General.*

This is a general section based on Interim Guideline A and explains the purpose of the proposed regulations—to establish standards and practices for marketing and sales activities for EGSs and NGSs and their agents. Section 111.1 also explains the applicability of the proposed regulations to the retail residential energy market.

#### *Section 111.2. Definitions.*

This section sets forth definitions for terms used in the proposed regulations. The Interim Guidelines did not include a definition section. Accordingly, this section proposes definitions for some terms, and references to definitions for other terms that have been already established in the Public Utility Code, 66 Pa.C.S. §§ 101 et seq., or in other regulations in the *Pennsylvania Code* at Title 52 (relating to public utilities).

In regard to the proposed definition of “agent,” the Commission recognizes that some entities that provide marketing and sales support services may provide service to one supplier in one distribution company’s service territory and another supplier in another distribution company’s service territory. Also, there are some such entities that may have separate divisions that provide marketing and sales support service to different suppliers. Therefore, we propose that agents that provide marketing and/or sales support services to more than one supplier shall be included in our proposed definition of “agent” and will be bound to follow these regulations when they are finalized. The Commission specifically solicits comments on this definition of “agent.”

#### *Section 111.3. Supplier liability for its agent.*

This section states that a supplier, defined to include an EGS or a NGS, may use agents to conduct marketing or sales activities in accordance with federal, state and municipal law, and applicable commission rules, regula-

tions and orders. Referencing section 54.43(f) and section 62.114(e), relating to standards of conduct for licensees for EGSs and NGSs respectively, it discusses a supplier’s liability for the actions of its employees, agents and representatives and imposition of possible penalties, including the suspension or revocation of a supplier’s license. This proposed regulation is based on Interim Guideline A.

#### *Section 111.4. Agent qualifications and standards; criminal background investigations.*

Section 111.4 proposes a requirement for a supplier to develop standards and qualifications for individuals that it hires as its agents to conduct marketing and sales activities. Most importantly, it requires a supplier to conduct criminal background investigations, including a check of the Megan’s Law registry prior to hiring an individual to conduct door-to-door marketing and sales activities for the supplier. A supplier is also required to confirm that a contractor or vendor has performed criminal background investigations on its employees, agents and independent contractors who will perform door-to-door activities on the supplier’s behalf. This proposed regulation is based on Interim Guideline B.

#### *Section 111.5. Agent training.*

Section 111.5 sets forth requirements for agent training, and includes the same subject matter that was included in Interim Guideline C. The proposed regulation does not require advance review and approval of training materials, but does require the supplier to provide training materials and training records of its agents to the Commission upon request. A new requirement proposed is that a supplier shall ensure that its vendors and independent contractors have provided the same training for its employees, agents or independent contractors. Finally, there is a requirement that the supplier monitor a representative sample of telephonic and door-to-door marketing calls to evaluate its training program and to ensure that its agents are providing accurate and complete information to customers. A similar provision may be found in Interim Guideline D-2.

#### *Section 111.6. Agent compensation; discipline.*

This section is based in part on advice about agent compensation plans offered in the Interim Guidelines Final Order at page 33 and Interim Guideline E (relating to discipline). This proposed section requires a supplier to design its agent compensation programs so that it does not promote or encourage or reward behavior that runs counter to the practices established by these regulations. The section also requires a supplier to incorporate in its agent discipline practices and procedures the Commission’s long-standing zero tolerance policy on the unauthorized transfers of customer accounts and the violation of other consumer protections.

#### *Section 111.7. Customer authorization to transfer account; transaction; verification; documentation.*

This proposed regulation is based primarily on Interim Guideline D (monitoring/quality control/documentation).

This section requires the supplier to establish a transaction process for a customer to authorize the transfer of his or her account to the supplier. Additionally, it sets forth specific information required to be included on a document used to complete a transaction, such as a means to identify the agent who completed the transaction and a notation indicating how the transaction was completed. The latter would include whether the transaction was the result of a door-to-door or a telephone

contact with an agent, or whether the transaction was the result of the customer completing the transaction document and sending it to the supplier outside the presence of, and without interacting with, an agent working for the supplier. The supplier is required to provide documentation used to complete a transaction to the Commission upon request.

The supplier is also required to establish a process to verify transactions that involved an agent. The process is to confirm that the customer authorized the transfer of the account to the supplier. The supplier may use, but is not required to use, a third party for the verification. A transaction that was completed by a customer outside the presence of, or without interacting with, an agent would not need to be submitted to the verification process. These transactions would be ones where a customer completed a form and mailed it directly to the supplier, or where a customer completed an on-line application or e-mailed an electronic document to a supplier.

Additionally, this section requires that the verification process be separate from the transaction process, and that the verification process be initiated only after the transaction has been completed. This section also requires that when a transaction is the result of an in-person contact with an agent in a public location, the verification process can be initiated only after the customer leaves the vicinity of the agent. When a transaction resulted from an agent's contact with the customer at the customer's residence, the verification process can be initiated only after the agent has physically exited the customer's residence. At the end of the verification process contact, the customer must be informed of the three business day right of rescission of the transaction pursuant to Commission regulations at either 52 Pa. Code § 54.5(d) or § 62.75(d).

The proposed regulation also requires a supplier to maintain a record of the verification in a system that is capable of retrieving the record by customer name and by customer account number for a period of six billing cycles. It prescribes the contents of the verification record, and provides that copies of verification records shall be provided to the Commission upon request.

Finally, this section states that when the supplier is informed that a transaction cannot be verified, the supplier may contact the customer by telephone, e-mail or by letter to offer assistance to correct the identified problem so that the transaction can be re-submitted to the verification process.

This section differs from the Interim Guidelines that required that all transactions be verified. The proposed regulation creates an exception to the verification process for transactions completed by the customer without the involvement of an agent. Because the majority of the customer concerns about suppliers' marketing and sales practices involved the suppliers' use of agents, the verification of transactions completed by the customer that did not involve an agent at all seemed to be a redundant exercise, which would create unnecessary costs for suppliers. For this reason, we created this exception.

*Section 111.8. Agent identification; misrepresentation.*

This section is based on Interim Guideline G and requires that the supplier issue a photo identification badge to an agent who conducts door-to-door activities or appears at public events. The section also requires that an agent's badge shall be visible at all times when the agent is engaged in such activities.

This section also requires an agent, upon first contact with a customer, to identify the supplier that he or she represents, and to state that he or she is not working for, and is independent of, the local distribution company. Additionally, the agent shall not wear any apparel or accessories or carry equipment that contains branding elements, including the logo of the local distribution company. The agent also must not use the name, bills, marketing materials or consumer education materials of another supplier, distribution company, or government agency in a way that suggests a relationship that does not exist.

This section also requires a supplier that is an affiliate of a distribution company to comply with applicable regulations concerning affiliate marketing at 52 Pa. Code § 54.122 (relating to the code of conduct) for an EGS or § 62.142 (relating to the standards of conduct) for an NGS.

*Section 111.9. Door-to-Door Sales.*

This section is based on elements found in Interim Guideline G (misrepresentation), Interim Guideline J (local ordinances), Interim Guideline M (marketing, sales activities and materials), and Interim Guideline O (no call/no visit list).

The section requires that a supplier and its agents comply with local municipal ordinances governing door-to-door marketing and sales activities. It establishes certain hours of the day when a supplier may engage in door-to-door marketing and sales activities unless a local ordinance has restrictions that are more stringent. It requires that the supplier notify local municipal officials in advance of its schedule with the locations where it intends to conduct marketing and sales activities. This proposed regulation also requires that the supplier's agent wear his or her identification badge and have it visible at all times.

In regard to customer interactions, the proposed regulation requires the agent, upon greeting the customer, to identify himself or herself by name, the supplier that he or she represents and the reason for the visit. The agent also is required to offer a business card or other material that lists the agent's name, title and identification number, the supplier's name and contact information for the supplier. This section also addresses an agent's interaction with a potential customer where there is a language barrier.

Additionally, the proposed regulation sets requirements that are to be observed after the transaction has been completed. The agent is required to provide a copy of each document that the customer signed or initialed relating to the transaction before the agent leaves the customer's residence. Upon request, copies of the materials used by the agent during the call shall be provided to the customer as soon as is practical. The agent also is required to explain the supplier's verification process and that the process will not be initiated until the agent has left the customer's residence. The agent must state that the supplier will send a copy of the disclosure statement to the customer after the transaction has been verified, and that the customer may rescind the transaction within three business days of receiving the disclosure statement.

The proposed regulation also requires the agent to leave a residence when requested to do so by the customer, the owner or another occupant of the premises. Finally, this section directs a supplier to comply with an individual's request to be exempted from door-to-door marketing and sales contacts, and to note this request on its existing marketing or sales databases.

*Section 111.10. Telemarketing.*

This section is based on Interim Guideline H (federal law/consumer protection) and Interim Guideline O (no call/no visit list). This section requires that a supplier and its agents comply with applicable provisions of Pennsylvania's Telemarketer Registration Act, 73 P. S. §§ 2241—2249, and the federal "Do Not Call" law. See Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C §§ 6101, et seq. and Telemarketing Sales Rule, 16 CFR Part 310. This section makes it clear that that customer consent to the release of customer information by the distribution company to a supplier to enable competitive solicitations does not constitute an express intent to receive telephone solicitation calls.

In addition, this section proposes several requirements to lessen customer confusion that may occur when a transaction is completed by telephone. An agent contacting a customer by telephone must provide the customer with his or her first name and the name of the supplier on whose behalf the agent is calling. The agent must also provide his or her identification number upon customer request.

After completing the transaction, the agent must explain the supplier's verification process and that the supplier will send a copy of the disclosure statement after the transaction is verified. At the end of the call, the agent must state that the customer may rescind the transaction within three business days of receiving the disclosure statement.

*Section 111.11. Receipt of disclosure statement and right to rescind transaction.*

This section is based on Interim Guideline L (disclosure statement/contract terms) and Interim Guideline N (rescission period). This proposed regulation states that a supplier shall provide a copy of its disclosure statement to a customer as soon as is practical after the completion of a transaction that does not require to be verified. The supplier shall provide a disclosure statement to a customer after a transaction that involved an agent is verified. The proposed section also includes a rebuttable presumption that a customer will have received a disclosure statement, correctly addressed with sufficient first class postage attached, three days after it is deposited in the United States mail. This proposed regulation is patterned after the Commission's "mail box rule" at 52 Pa. Code § 1.56(b) (relating to date of service).

*Section 111.12. Consumer protection.*

This proposed regulation is based on Interim Guideline H (federal law/consumer protection) and Interim Guideline I (state laws/OAG/consumer protection). This section prohibits discrimination in the provision of electric generation and natural gas supply as to availability and terms of service based on race, color, religion, national origin, sex, marital status, age, receipt of public assistance income, and exercise of rights under the Consumer Credit Protection Act (15 U.S.C. §§ 1601—1693c). See 15 U.S.C. §§ 1691—1691f (relating to equal credit opportunity) and 12 CFR Part 202 (relating to Equal Credit Opportunity Act (Regulation B)). This requirement is consistent with the Commission's regulations relating to standards of conduct and disclosure for licensees at 52 Pa. Code § 54.43(e) and § 62.114(e), for EGSs and NGSs, respectively.

Additionally, this section requires that a supplier and its agent must comply with federal "cooling off" period for door-to-door sales: *Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations*, 16

CFR Part 429. A supplier must also comply with the Commission's regulations at 52 Pa. Code § 54.5(d) and § 62.75(d) that provide a three business day right of rescission of a transaction after the customer receives a disclosure statement.

*Section 111.13. Customer complaints.*

This proposed regulation is based on Interim Guideline P and requires that a supplier investigate all customer inquiries, disputes and complaints concerning marketing or sales practices. It further requires that a supplier cooperate with the Commission and other government agencies that are investigating complaints about prohibited marketing or sales practices. The supplier must also provide the Commission with a single contact and a list of escalation contacts to be used by Commission staff to obtain information to address customer inquiries and complaints.

This section also requires a supplier to implement an internal process for responding to, and resolving customer inquiries, disputes and complaints and to document and retain records of the resolution of these matters. Commission regulations with which such a supplier's internal process must comply are listed at the end of the section.

*Section 111.14. Notification regarding marketing or sales activity.*

This section is based on Interim Guideline K (distribution company and commission involvement). This proposed regulation requires a supplier to contact the Commission in advance of any sales or marketing efforts that the supplier anticipates may generate telephone calls and inquiries to the Commission. A slight departure from the guideline is that the supplier will now be required to provide general information about such activity to the local distribution utility. This section requires that the distribution company use this information only for informing its customer service representatives to enable them to respond to customer questions about the activity. Finally, this section requires distribution companies to refer customer questions about a supplier's prices and terms of service to the supplier.

**Conclusion**

The proposed regulations issued for comment by this order represent the first step in establishing best practices for marketing and sales activities for suppliers serving residential customers. This step was necessary to address customer concerns about various marketing strategies and sales techniques not heretofore utilized in Pennsylvania's growing retail energy market.

The proposed regulations are based for the most part on the Interim Guidelines developed by the CHARGE and SEARCH working groups, and will be applicable to both EGSs and NGSs. Thus, we encourage all interested parties to comment on these proposed regulations.

Accordingly, pursuant to sections 501, 504, 1501, 1504, 2206(b), 2208(b) and (e), 2807(d)(1) and 2809(b) and (e) of the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501, 1504, 2206(b), 2208(b) and (e), 2807(d)(1) and 2809(b) and (e); sections 201 and 202 of the Act of July 31, 1968, P. L. 769 No. 240, 45 P. S. §§ 1201—1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; section 204(b) of the Commonwealth Attorneys Act, 71 P. S. § 732.204(b); section 745.5 of the Regulatory Review Act, 71 P. S. § 745.5; and section 612 of the Administrative Code of 1929, 71 P. S. § 232, and the regulations promulgated thereunder at 4 Pa. Code

§§ 7.231—7.234, we are proposing to amend our regulations as set forth in Annex A; *Therefore,*

*It Is Ordered That:*

1. A rulemaking docket shall be opened to promulgate regulations at 52 Pa. Code to add Chapter 111 relating to Marketing and Sales Practices for the Retail Residential Energy Market as set forth in Annex A.

2. The Secretary shall submit this order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.

3. The Secretary shall submit this order and Annex A for review and comments to the Independent Regulatory Review Commission and the legislative standing committees.

4. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. An original and 15 copies of written comments referencing the docket number of the proposed regulations be submitted within 60 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn.: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265. To facilitate posting, a copy of each comment filed shall be forwarded by means of e-mail to Patricia Krise Burket, pburket@state.ps.us, Daniel Mumford, dmumford@state.pa.us, and Cyndi Page, cypage@state.pa.us.

6. A copy of this order and Annex A shall be served on jurisdictional electric generation companies, jurisdictional natural gas distribution companies, licensed electric generation suppliers, licensed natural gas suppliers, the Office of Consumer Advocate, the Office of Small Business Advocate, the Energy Association of Pennsylvania and other parties that filed comments at the docket number M-2010-2185981.

7. The Office of Competitive Market Oversight shall electronically serve a copy of this order and Annex A on all persons on the contact list for the Committee Handling Activities for Retail Growth in Electricity (CHARGE) and Stakeholders Exploring Avenues to Remove Competitive Hurdles (SEARCH).

8. A copy of this order and Annex A shall be posted on the Commission's web site at the Office of Competitive Market Oversight's web page.

9. The contact persons for this proposed rulemaking are Patricia Krise Burket, Law Bureau, (717) 787-3464 (legal) and Daniel Mumford, Bureau of Consumer Services, (717) 783-1957 (technical).

ROSEMARY CHIAVETTA,  
*Secretary*

**Fiscal Note:** 57-283. No fiscal impact; (8) recommends adoption.

*Statement of Vice Chairman Tyrone J. Christy*

Although the proposed regulations that the Commission is issuing today are well-intentioned, they are based on the assumption that door-to-door marketing is a valid marketing strategy. I invite comment from the public on this issue. In addition, I request that all of the electric distribution companies (EDCs) file information similar to that previously provided by PPL on the complaints and phone calls that they have received from their customers

concerning door-to-door marketers.<sup>2</sup> Since rate caps expired in the remaining EDC service territories on January 1, 2011, my understanding is that EDCs other than PPL have been receiving complaints from their customers about door-to-door marketers. I believe that it is important that this information be made public.

It is telling that all of the entities that represent the interests of residential consumers that filed comments in the related proceeding last year at Docket No. M-2010-2185981, *Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers*, either opposed door-to-door marketing, or expressed serious concerns about the practice. The Commission's Consumer Advisory Council (CAC) stated as follows:

The Consumer Advisory Council strongly urges the Pennsylvania Public Utility Commission to conclude that door-to-door sales of electric generation and natural gas utility service constitute "unsafe, inadequate and unreasonable service." As discussed in more detail below, door-to-door sales are fraught with danger for many consumers. Moreover, unlike the PUC and OCA web sites, door-to-door sales are designed to provide consumers with inadequate information to make an informed purchase decision. These important safety and information issues alone make door-to-door sales of electric generation and natural gas utility service unreasonable. Consequently, the Commission should conclude that door-to-door sale of such utility service should be prohibited.

\* \* \* \* \*

[T]he process of door-to-door sales contravenes the important consumer education efforts engaged in by the PUC and the OCA. . . [S]uch sales . . . will not provide consumers the same level of detail made available by these agencies, and will limit a consumer's opportunity for reflection and consideration of the information they receive at their door and should be prohibited. Unlike some other goods and services sold door-to-door, the CAC submits that electric and natural gas service are so essential and fundamental to the life of residential consumers and families that the selection process for electric and natural gas service must be an "informed and comparative purchase decision."

\* \* \* \* \*

The CAC submits that the sale of electric generation and natural gas utility service door-to-door requires greater regulation than any other sales methods because of the "physical invasion" of consumer privacy which results from door-to-door sales. The physical invasion of privacy creates an increased risk of physical harm to consumers and a greater likelihood that elderly, infirm and uneducated consumers may become victims. . . In the experience of the CAC, door-to-door sales often target the elderly. . . The CAC is extremely concerned that the elderly, infirm and uneducated consumers may be victimized by door-to-door sales through the use of unfair and deceptive trade practices. We encourage this Commission to adopt the one position which avoids this possibility and prohibit door-to-door sales of electric supply and natural gas utility service.

<sup>2</sup> Attached to my Dissenting Statement at Docket No. M-2010-2185981 was a memo prepared at my request by PPL, which provided a representative sample of calls received by PPL in response to door-to-door marketing by EGSs in PPL's service territory. The most common complaint involves EGS sales agents telling customers that they represent PPL. The most alarming complaint involves a complaint about a sales agent exposing himself in the customer's home after asking to use the bathroom.

CAC Comments at 2-5. The Pennsylvania Utility Law Project (PULP) stated as follows:

PULP respectfully submits that the Commission should proceed cautiously to ensure that the development of competitive markets does not come at the expense of other important consumer concerns, such as the safety of vulnerable customer populations and the protection of privacy. . . The proposed use of door-to-door marketing . . . places vulnerable consumer populations at too great a risk and improperly violates consumer privacy. Door-to-door marketing should be prohibited by the Interim Guidelines.

\* \* \* \* \*

Door-to-door marketing places vulnerable customers at heightened risk of unfair and deceptive trade practices. The complaints of unfair and deceptive trade practices cited most often regarding door-to-door sales are of five kinds: (1) Deception by salesmen in getting inside the door; (2) high-pressure sales tactics; (3) misrepresentation as the quality, price or characteristics of the product; (4) high prices for low-quality merchandise; and (5) the nuisance created by the visit to the home by the uninvited salesmen. Vulnerable customers are particularly susceptible to these kinds of tactics and are often targeted for door-to-door sales. . . Elderly customers, particularly those with deteriorating mental capacities associated with dementia or Alzheimer’s disease, may be ill-equipped to or uncomfortable fending off unwanted attention from persistent sales people.

\* \* \* \* \*

[L]ow-income, elderly, disabled, non-English speaking communities are particularly susceptible to unfair and deceptive trade practices that often take place in door-to-door sales. They are “easy marks” who are targeted. . . [T]he danger to vulnerable populations is real. It is a real danger that the Commission can address by prohibiting the use of door-to-door sales.

Door-to-door marketing runs counter to the intent of the Choice Acts. Another problem with door-to-door sales is that it does not support customers in making an informed choice. This is a serious deficiency since the Choice Acts, as one might suspect from their names, are built upon the assumptions that customers will make choices, informed choices. The General Assembly explicitly included in each law a requirement that information be provided to customers to support an informed decision making process. As such, consumers will need to do homework as part of the process of choosing an alternative supplier. This homework includes researching a range of options and companies to have sufficient data on which to base a reasoned decision.

\* \* \* \* \*

Door-to-door sales methods are diametrically opposed to the kind of informed decision making contemplated by the Choice Acts and the General Assembly. Door-to-door sales are high-pressure, one-sided presentations . . . Given that door-to-door sales do not lead a consumer to make an informed choice, they run counter to the intent of the Choice Acts and should not be permitted.

\* \* \* \* \*

The prohibition of door-to-door marketing would not unduly burden alternative suppliers or undermine the creation of a competitive marketplace. We live in

a world that is awash with wireless connection and multiple channels of communication—radio, television, print media, the Internet, e-mail, etc. Millions of business use these channels to market their products successfully. It seems difficult to understand why electric generation and natural gas suppliers can not do the same. . . It seems particularly questionable when it will come at the expense of consumer safety and privacy. Door-to-door-sales are not needed since there are ample other resources consumers can use to learn about alternative suppliers.

PULP Comments at 2-7.

The Office of Consumer Advocate (OCA), AARP, and Dominion Retail submitted joint comments supporting the adoption of the Interim Guidelines, and noting that it shares the Commission’s concerns about door-to-door marketing. OCA/AARP/Dominion stated as follows:

Shopping for energy supply requires thoughtful consideration of a wide range of information, including information about prices, individual customer usage patterns, other available offers, default service prices, potential termination fees, and the length of contracts in the face of price volatility. A door-to-door sales contact, where the customer may not have ready access to the necessary information for making an informed choice, and may feel pressured to make a quick decision in light of a sales agent standing in their door or home, could result in customers making less than optimal choices about their energy supply. This concern is heightened even further when door-to-door sales techniques are used with senior citizens or vulnerable customer populations. Making an informed choice is critical for these customers as the potential for getting locked into a contract that becomes unaffordable is not merely an annoyance, but a matter of their own health and safety if they are unable to pay their energy bill and face termination of service.

\* \* \* \* \*

The OCA/AARP/Dominion Retail would also note that the Commission’s concerns about customer confusion and potential for fraud or abuse in the door-to-door sales contact have been borne out in other states where this sales technique has been used. In Illinois, AARP joined with the Illinois Citizens Utility Board (CUB) in filing a complaint against a marketer related to door-to-door sales practices. The Illinois Commerce Commission and CUB had received approximately 5,630 complaints alleging various forms of misrepresentation by the sales agents for the marketer, including allegations that the sales agents were switching customers without authorization, were representing that they were from the utility, were providing misleading or incomplete information, and were taking advantage of non-English speaking or elderly customers who did not understand the transaction. The OCA/AARP/Dominion Retail submit that while there is always a potential for fraud, fraud and sales abuses can be particularly prevalent in hard-sell door-to-door solicitations as has been seen in other states.

OCA/AARP/Dominion Energy Comments at 1-2.

In addition to the concerns about unscrupulous sales agents expressed by the CAC, PULP and the OCA/AARP/Dominion Retail in their previous comments, I also am concerned that door-to-door sales will lead to instances where customers are physically assaulted and/or sub-

jected to property crimes by sales agents who have not been properly screened. Given that electricity and natural gas supply can be marketed effectively through a myriad of other ways, I invite comment on whether the Commission should continue to allow door-to-door sales of electricity and gas to residential customers.

TYRONE J. CHRISTY,  
Vice Chairperson

### Annex A

## TITLE 52. PUBLIC UTILITIES

### PART I. PUBLIC UTILITY COMMISSION

#### Subpart F. COMPETITIVE MARKETS

#### CHAPTER 111. MARKETING AND SALES PRACTICES FOR THE RETAIL RESIDENTIAL ENERGY MARKET

Sec.	
111.1.	General.
111.2.	Definitions.
111.3.	Supplier liability for its agent.
111.4.	Agent qualifications and standards; criminal background investigations.
111.5.	Agent training.
111.6.	Agent compensation; discipline.
111.7.	Customer authorization to transfer account; transaction; verification; documentation.
111.8.	Agent identification; misrepresentation.
111.9.	Door-to-door sales.
111.10.	Telemarketing.
111.11.	Receipt of disclosure statement and right to rescind transaction.
111.12.	Consumer protection.
111.13.	Customer complaints.
111.14.	Notification regarding marketing or sales activity.

#### § 111.1. General.

The purpose of this chapter is to establish standards and practices for marketing and sales activities for EGSs and NGSs and their agents to ensure the fairness and the integrity of the competitive residential energy market. EGSs and NGSs and their agents shall comply with these standards and practices when engaged in sales and marketing activities involving residential customers. When these standards and practices do not address a specific situation or problem, the supplier shall exercise good judgment and use reasonable care in interacting with customers, prospective customers and members of the public.

#### § 111.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

*Act*—Telemarketer Registration Act (73 P. S. §§ 2241—2249).

*Agent*—

(i) A person who conducts marketing or sales activities, or both, on behalf of a single licensed supplier. The term includes an employee, a representative, an independent contractor or a vendor.

(ii) For NGSs, the term also includes “marketing services consultant” or “nontraditional marketer” as defined in § 62.101 (relating to definitions).

*Commission*—The Pennsylvania Public Utility Commission.

*Disclosure statement*—A written disclosure of the terms of service between a supplier and a customer that satisfies the definition of “consumer contract” in section 3 of the Plain Language Consumer Contract Act (73 P. S. § 2203) containing information as required in, and developed consistent with, § 54.5 (relating to disclosure state-

ment for residential and small business customers) for electric generation service and § 62.75 (relating to disclosure statement for residential and small business customers) for natural gas supply service.

*Distribution company*—An EDC or an NGDC.

*Door-to-door sales*—A solicitation or sales method whereby an agent proceeds randomly or selectively from residence to residence without prior specific appointment.

*EDC*—*Electric distribution company*—The term as defined in 66 Pa.C.S. § 2803 (relating to definitions).

*EGS*—*Electric generation supplier*—The term as defined in 66 Pa.C.S. § 2803.

*Electric generation service*—Electricity and related services.

*Energy service*—Electric generation service or natural gas supply service.

*Marketing services consultant*—The term as defined in § 62.101.

*NGDC*—*Natural gas distribution company*—The term as defined in 66 Pa.C.S. § 2202 (relating to definitions).

*NGS*—*Natural gas supplier*—The term as defined in 66 Pa.C.S. § 2202.

*Natural gas supply services*—The term as defined in 66 Pa.C.S. § 2202.

*Sales*—The extension of an offer to provide services or products communicated orally, electronically or in writing to a customer.

*Supplier*—An EGS or an NGS.

*Telemarketing*—An activity, plan, program or campaign using one or more telephones that is conducted to induce customers to purchase goods or services. See section 2 of the act (73 P. S. § 2242), regarding definitions.

#### § 111.3. Supplier liability for its agent.

(a) A supplier may use an agent to conduct marketing or sales activities in accordance with Federal, State and municipal laws and applicable Commission rules, regulations and orders.

(b) In accordance with § 54.43(f) (relating to standards of conduct and disclosure for licensees) for an EGS and § 62.114(e) (relating to standards of conduct and disclosure for licensees) for an NGS, a supplier is responsible for fraudulent, deceptive or other unlawful marketing or billing acts performed by its agent.

(c) Consistent with due process, for violations of State and Federal law committed by the supplier’s agent, the Commission may:

(1) Suspend or revoke a supplier’s license.

(2) Impose fines for fraudulent acts, violations of Commission regulations and orders.

#### § 111.4. Agent qualifications and standards; criminal background investigations.

(a) A supplier shall exercise good judgment in developing standards and qualifications for individuals it chooses to hire as its agents. A supplier may not hire an individual that fails to meet its standards.

(b) Prior to hiring an individual who will be performing door-to-door marketing and sales activities, a supplier shall conduct criminal background investigations to deter-

mine if the individual presents a probable threat to the health and safety of the public.

(1) The criminal background investigation shall include checking the sex offender registry commonly referred to as the Megan's Law registry maintained by the Pennsylvania State Police.

(2) There shall be a presumption that a person whose name is listed on the Megan's Law registry presents a threat to the health and safety of the public.

(c) When a supplier contracts with an independent contractor or vendor to perform door-to-door activities, the supplier shall confirm that the contractor or vendor has performed criminal background investigations on its employees and agents in accordance with this section and with the standards set by the supplier.

**§ 111.5. Agent training.**

(a) A supplier shall ensure the training of its agents on the following subjects:

(1) State and Federal laws and regulations that govern marketing, telemarketing, consumer protection and door-to-door sales, including consumer protection regulations in Chapters 54 and 62 (relating to electricity generation customer choice; and natural gas supply customer choice) and applicable provisions in Chapters 56, 57 and 59 (relating to standards and billing practices for residential utility service; electric service; and gas service).

(2) Responsible and ethical sales practices.

(3) The supplier's products and services.

(4) The supplier's rates, rate structures and payment options.

(5) The customer's right to rescind and cancel contracts.

(6) The applicability of an early termination fee for contract cancellation when the supplier has one.

(7) The necessity of adhering to the script and knowledge of the contents of the script if one is used.

(8) The proper completion of transaction documents.

(9) The supplier's disclosure statement.

(10) Terms and definitions related to energy supply, transmission and distribution service.

(11) Information about how customers may contact the supplier to obtain information about billing, disputes and complaints.

(b) A supplier shall document the training of an agent and maintain a record of the training.

(c) A supplier shall make training materials and training records available to the Commission upon request. A supplier is not required to submit training materials and programs for advance Commission review and approval.

(d) When a supplier contracts with an independent contractor or vendor to perform marketing or sales activities on the supplier's behalf, the supplier shall confirm that the contractor or vendor has provided training to employees, agents and independent contractors in accordance with this section.

(e) The supplier shall monitor a representative sample of telephonic and door-to-door marketing and sales calls to:

(1) Evaluate the supplier's training program.

(2) Ensure that agents are providing accurate and complete information, complying with applicable rules and regulations and providing courteous service to customers.

**§ 111.6. Agent compensation; discipline.**

(a) A supplier shall design its agent compensation program to ensure that it does not promote, encourage or reward behavior than runs counter to the practices established in this chapter and to the general obligation of fair dealing and good faith that a supplier should exercise when interacting with customers.

(b) In developing internal agent discipline practices and procedures, a supplier shall incorporate the Commission's long-standing zero-tolerance policy regarding the unauthorized transfer of customer accounts and the violation of other consumer protections. A supplier shall consider the legal consequences faced by a supplier that fails to properly train and supervise its agents.

**§ 111.7. Customer authorization to transfer account; transaction; verification; documentation.**

(a) A supplier shall establish a transaction process for a customer to authorize the transfer of the customer's account to the supplier.

(1) The process may include the following:

(i) The formation of a written or oral contract when a customer knowingly authorizes the transfer of the customer's account to a supplier.

(ii) The enrollment of a customer in a program when a customer knowingly authorizes, orally or in writing, the transfer of the customer's account to a supplier.

(iii) The subscription of a customer to a program when a customer knowingly authorizes, orally or in writing, the transfer of the customer's account to a supplier.

(2) A document used to complete a transaction shall include a means to identify the agent who completed the transaction and a notation indicating whether the transaction was the result of:

(i) A door-to-door call or other in-person contact with an agent.

(ii) A telephone contact with an agent.

(iii) A written document completed and mailed to a supplier by a customer outside the presence of, or without interaction with, an agent.

(iv) An electronic document completed and uploaded to a supplier's web site or e-mailed to a supplier by a customer outside the presence of, or without interaction with, an agent.

(3) A supplier shall provide a copy of documentation used in a customer transaction to the Commission upon request.

(b) A supplier shall establish a process to verify a transaction that involved an agent. The process shall confirm that the customer authorized the transfer of the customer's account to the supplier. This subsection does not apply to a transaction that was completed solely by the customer as set forth in subsection (a)(2)(iii) and (iv).

(1) A supplier may use a third party to verify transactions.

(2) The verification process shall be separate from the transaction process and initiated only after the transaction has been finalized.



(i) When verifying a transaction that resulted from an agent's in-person contact with a customer in a public location, the verification process shall be initiated only after the customer leaves the vicinity of the agent.

(ii) When verifying a transaction that resulted from an agent's contact with a customer at the customer's residence, the verification process shall be initiated only after the agent has physically exited the customer's residence.

(3) A customer shall be informed of the 3-business-day right of rescission of the transaction under §§ 54.5(d) and 62.75(d) (relating to disclosure statement for residential and small business customers) at the end of the verification process contact.

(4) A supplier shall maintain a record of a verification in a system that is capable of retrieving the record by customer name and customer account number for a period of time equivalent to at least six billing cycles to enable compliance with § 57.177 (relating to customer dispute procedures) for an EGS and § 59.97 (relating to customer dispute procedures) for an NGS.

(5) The verification record shall include the transaction documents and the following information:

- (i) The date that the transaction was completed.
- (ii) The name or identification number of the agent that completed the transaction.
- (iii) The date of the verification.
- (iv) The name or identification number of the individual that conducted the verification.
- (v) The results of the verification.
- (vi) The date that the disclosure statement was provided to the customer and the method by which it was provided.

(6) A supplier shall provide copies of verification records to the Commission upon request.

(c) When a supplier is informed that a transaction could not be verified, the supplier shall contact the customer by telephone, e-mail or letter and explain that the transaction could not be verified. The supplier may offer assistance to correct the problem so that the transaction can be resubmitted to the verification process.

#### § 111.8. Agent identification; misrepresentation.

(a) A supplier shall issue an identification badge to agents who conduct door-to-door activities or appear at public events. The badge must:

- (1) Accurately identify the supplier, its trade name and logo.
- (2) Display the agent's photograph.
- (3) Display the agent's full name and identification number in reasonably sized font.
- (4) Be visible at all times.

(b) Upon first contact with a potential customer, an agent shall identify the supplier that he represents. The agent shall state that he is not working for and is independent of the customer's local distribution company or other supplier. This requirement shall be fulfilled either by an oral statement by the agent or by written material provided by the agent.

(c) When conducting door-to-door activities or appearing at a public event, an agent may not wear apparel or accessories or carry equipment that contains branding elements, including a logo, that are deceptively similar to that of the local Pennsylvania distribution company.

(d) A supplier may not use the name, bills, marketing materials or consumer education materials of another supplier, distribution company or government agency in a way that suggests a relationship that does not exist.

(e) An agent of a supplier that is an affiliate of a distribution company shall comply with the rules regarding affiliate marketing in § 54.122 (relating to code of conduct) for an EGS and in § 62.142 (relating to standards of conduct) for an NGS.

#### § 111.9. Door-to-door sales.

(a) A supplier and its agents shall comply with local ordinances regarding door-to-door marketing and sales activities.

(1) A supplier shall limit door-to-door marketing or sales activities to the hours between 9 a.m. and 7 p.m. during the 6 months beginning October 1 and ending March 31, and to the hours between 9 a.m. and 8 p.m. during the months beginning April 1 and ending September 30. When a local ordinance has stricter limitations, a supplier shall comply with the local ordinance.

(2) As a courtesy, a supplier shall notify the local municipal officials in advance of its schedule and the locations in which it intends to conduct door-to-door marketing and sales activities.

(b) A supplier and its agents shall comply with State and Federal laws and regulations that govern marketing, consumer protection and door-to-door sales including consumer protection regulations in Chapters 54 and 62 (relating to electricity generation customer choice; and natural gas supply customer choice) and the applicable provisions in Chapters 56, 57 and 59 (relating to standards and billing practices for residential utility service; electric service; and gas service).

(c) When conducting door-to-door sales or marketing activities, an agent shall display his identification badge issued by the supplier. The identification shall be visible at all times.

(d) When engaging in door-to-door sales or marketing activities, an agent shall comply with the following:

(1) After greeting the potential customer, the agent shall immediately identify himself by name, the supplier the agent represents and the reason for the visit. The agent shall state that he is not working for and is independent of the local distribution company or another supplier.

(2) The agent shall offer a business card or other material that lists the agent's name, identification number and title and the supplier's name and contact information, including telephone number. This information does not need to be preprinted on the material. When the information is handwritten, it shall be printed and legible.

(e) When a customer's English language skills are insufficient to allow the customer to understand and respond to the information being conveyed by the agent, or when the customer or a third party informs the agent of this circumstance, the agent shall find another agent who is fluent in the customer's language to continue the sales or marketing activity. If the agent cannot find another agent to help with translation, the agent shall terminate contact with the customer. The agent shall use translation services, electronic language translation devices and language identification cards only to identify the language spoken by the potential customer.

(f) When an agent completes a transaction with a customer, the agent shall:

(1) Provide a copy of each document that the customer signed or initialed relating to the transaction. A copy of these documents shall be provided to the customer before the agent leaves the customer's residence. If requested by the customer, a copy of the materials used by the agent during the call shall be provided to the customer as soon as practical.

(2) Explain the supplier's verification process to the customer and that the verification process may not be initiated until after the agent has left the customer's residence.

(3) State that the supplier shall send a copy of the disclosure statement about the service to the customer after the transaction has been verified.

(4) State that the customer may cancel the transaction within 3 business days after receiving the disclosure statement.

(g) An agent shall immediately leave a residence when requested to do so by a customer or the owner or an occupant of the premises.

(h) A supplier shall comply with an individual's request to be exempted from door-to-door marketing and sales contacts and annotate its existing marketing or sales databases consistent with this request.

#### § 111.10. Telemarketing.

(a) A supplier and its agents shall comply with State and Federal laws and regulations that govern marketing, consumer protection and telemarketing sales including consumer protection regulations in Chapters 54 and 62 (relating to electricity generation customer choice; and natural gas supply customer choice) and applicable provisions in Chapters 56, 57 and 59 (relating to standards and billing practices for residential utility service; electric service; and gas service).

(1) A supplier that is licensed by the Commission and engages in telemarketing is not required to register as a telemarketer under section 3(a) of the act (73 P.S. § 2243(a)), regarding registration requirement, but shall comply with other provisions of the act.

(2) An agent that contracts with a supplier to conduct telemarketing and sales activities on behalf of the supplier shall register as a telemarketer and comply with the act.

(3) A supplier and its agents shall comply with the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C.A. §§ 6101—6108) and 16 CFR Part 310 (relating to telemarketing sales rule).

(4) Customer consent to the release of customer information by the distribution company to the supplier to enable competitive solicitations does not constitute an express intent to receive telephone solicitation calls. See section 5 of the act (73 P.S. § 2245), regarding unlawful acts and penalties. See the definition of "do not call list" in section 2 of the act (73 P.S. § 2242).

(b) An agent who contacts customers by telephone shall provide the agent's first name and state the name of the supplier on whose behalf the call is being made. The agent shall provide his identification number upon request by the customer.

(c) When an agent completes a transaction with a customer, the agent shall explain the supplier's verification process to the customer and state that the supplier will send a copy of the disclosure statement and other material about the service to the customer after the transaction has been verified. At the end of the telephone contact, the agent shall state that the customer may rescind the transaction within 3 business days after receiving the disclosure statement.

#### § 111.11. Receipt of disclosure statement and right to rescind transaction.

(a) When a transaction is completed by a customer without the presence of or interaction with an agent and is not submitted to the verification process, a supplier shall provide the customer with a copy of its disclosure statement as soon as it is practical. A customer shall have the right to rescind the transaction within 3 business days after receiving the disclosure statement.

(b) After a transaction that involved an agent has been completed and verified, a supplier shall provide the customer with a copy of its disclosure statement. A customer shall have the right to rescind the transaction within 3 business days after receiving the disclosure statement.

(c) There shall be a rebuttable presumption that a disclosure statement correctly addressed to a customer with sufficient first class postage attached shall be received by the customer 3 days after it has been properly deposited in the United States mail.

#### § 111.12. Consumer protection.

(a) A supplier and its agents may not discriminate in the provision of electric generation and natural gas as to availability and terms of service to a customer based on race, color, religion, national origin, sex, marital status, age, receipt of public assistance income and exercise of rights under the Consumer Credit Protection Act (15 U.S.C.A. §§ 1601—1693r) and 12 CFR Part 202 (relating to Equal Credit Opportunity Act (Regulation B)). This requirement is consistent with § 54.43(e) (relating to standards of conduct and disclosure for licensees) for EGSs and § 62.114(e) (relating to standards of conduct and disclosure for licensees) for NGSs.

(b) A supplier and its agents that engage in door-to-door marketing or sales shall comply with the Federal cooling-off period requirements. See 16 CFR Part 429 (relating to rule concerning cooling-off period for sales made at homes or at certain other locations).

(c) A supplier and its agents shall comply with the 3-business-day cooling off period requirement in § 54.5(d) (relating to disclosure statement for residential and small business customers) that applies to EGSs and § 62.75(d) (relating to disclosure statement for residential and small business customers) that applies to NGSs.

#### § 111.13. Customer complaints.

(a) A supplier shall investigate customer inquiries, disputes and complaints concerning marketing or sales practices. The supplier shall cooperate with the Commission and other government agencies that are investigating complaints about marketing or sales practices prohibited by State and Federal laws and with local law enforcement officials that are investigating complaints about violations of local municipal law.

(b) A supplier shall implement an internal process for responding to and resolving customer inquiries, disputes and complaints. The process shall document as a record

the customer inquiry, dispute or complaint, subsequent communications between the supplier and the customer, and the resolution of the inquiry, dispute or complaint. A supplier shall retain the record for a time period equivalent to six billing cycles in a system capable of retrieving that record by customer name and account number.

(c) The internal process shall comply with the applicable dispute regulations including:

- (1) Section 54.9 (relating to complaint handling process).
  - (2) Section 56.141 (relating to dispute procedures).
  - (3) Section 56.151 (relating to general rule).
  - (4) Section 56.152 (relating to contents of the public utility company report).
  - (5) Section 57.177 (relating to customer dispute procedures).
  - (6) Section 59.97 (relating to customer dispute procedures).
  - (7) Section 62.79 (relating to complaint handling process).
- (d) A supplier shall provide a single contact and a list of designated escalation contacts for the Commission staff to access to address consumer inquiries and resolve complaints.

**§ 111.14. Notification regarding marketing or sales activity.**

(a) When a supplier engages in marketing or sales activity that the supplier anticipates may generate phone calls and inquiries to the Commission, the supplier shall notify the Bureau of Consumer Services no later than the morning of the day that the activity shall begin. The notification shall include general, nonproprietary information about the activity, the period involved and a general description of the geographical area.

(b) A supplier shall provide the local distribution company with general, nonproprietary information about the marketing or sales activity that caused the supplier to provide notice to the Commission in accordance with subsection (a). The supplier shall provide this general information to the distribution company no later than the morning of the day that the marketing or sales activities begin. The distribution company shall use this information only for acquainting its customer service representatives with marketing or sales activity occurring in its service territory so that they may knowledgably address customer inquiries. Consistent with § 54.122 (relating to code of conduct) for an EDC and § 62.142 (relating to standards of conduct) for an NGDC, a distribution company may not use the information for other purposes.

(c) In responding to a customer inquiry about price and service, a distribution company may provide information about its own price and terms but shall refer the customer to the supplier for questions about the supplier's prices and terms.

[Pa.B. Doc. No. 11-1789. Filed for public inspection October 21, 2011, 9:00 a.m.]

[ 52 PA. CODE CH. 33 ]

[L-2011-2233841]

**Railroad Transportation**

The Pennsylvania Public Utility Commission (Commission), on March 31, 2011, adopted a proposed rulemaking order which amends the Commission's existing regulations in Chapter 33 (relating to railroad transportation) to reflect the technological and operational changes in the railroad industry and to reflect current Federal standards.

*Executive Summary*

The Pennsylvania Public Utility Commission is vested with jurisdiction over railroad common carriers operating within Pennsylvania. 66 Pa.C.S. §§ 102, 501, 1101, 1102, 1103. In furtherance of this statutory charge, the Commission has promulgated regulations governing railroad common carriers. 52 Pa. Code Chapter 33. Due to operational and technological changes in the industry and Federal preemption and standards, the Commission has proposed modifications to its current regulations.

Proposed changes to regulations governing railroad transportation include updated references and terminology, deletion of outdated references and regulations, proper reflection of federal law impacting regulation, and deletion of vestigial regulations.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 11, 2011, the Commission submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees. In addition to submitting the proposed rulemaking, the Commission provided IRRC and will provide the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Meeting held  
March 31, 2011

*Commissioners Present:* Robert F. Powelson, Chairperson; John F. Coleman, Jr., Vice Chairperson; Tyrone J. Christy; Wayne E. Gardner; James H. Cawley

***Proposed Rulemaking Amending 52 Pa. Code Chapter 33; Docket No. L-2011-2233841***

**Proposed Rulemaking Order**

*By the Commission:*

On November 6, 2009, we issued a Notice that the Commission sought to review the existing Railroad Transportation Regulations found at 52 Pa. Code Chapter 33, in order to seek more efficient and effective means to regulate the rail industry. *Review of Existing Railroad Transportation Regulations; 52 PA Code Chapter 33, Docket No. M-2009-2140262.* The Notice indicated that the Commission's regulations pertaining to railroads should reflect the technological and operational changes

of the railroad industry that have occurred over the last 30 years and reflect current Federal standards. The Notice further indicated that the review is intended to “ensure that the regulations address a compelling public interest; ensure that the costs of regulation do not outweigh the benefits; are written in a clear and concise manner; and, where Federal regulations exist, the Commission’s regulations should not exceed Federal standards unless justified by a compelling Commonwealth interest or required by State law.” The Notice was published in the *Pennsylvania Bulletin* on November 28, 2009 at 39 Pa.B. 6851. Comments and reply comments to the Notice were filed by various railroads, associations and unions. Having reviewed the comments and replies, we now propose the following changes to the Commission’s regulations at 52 Pa. Code Chapter 33. We note that this proposal is not an exhaustive compilation of our regulations that may be in need of revision. Rather, today we address those provisions which clearly require revision, based on observation and comments.

§ 33.1. *Definitions.*

The Commission proposes changing the definitions, as indicated, to be consistent with Federal Railroad Administration (FRA) regulations and current terminology.

§ 33.11. *General.*

The Commission proposes changing this provision to include updated references to the appropriate Commission Bureau for reporting accidents and incidents, and to delete those provisions that are inconsistent with current law.

§ 33.12. *Reportable accidents.*

The Commission proposes modifying this provision to be consistent with FRA regulations for reportable accidents. 49 C.F.R. Part 225. The Commission proposes deleting specific definitions of reportable accidents contained in the current regulation and adopting definitions provided by Federal law.

§ 33.13. *Telegraph and telephone reports.*

The Commission proposes modifying this provision to provide notification consistent with FRA regulations for telephone reports. 49 C.F.R. Part 225. The Commission proposes deleting specific circumstances requiring telephonic notification of accidents contained in the current regulation and adopting Federal telephonic reporting standards.

§ 33.14. *Accident report forms.*

The Commission proposes modifying this provision consistent with FRA regulations for accident report forms. 49 C.F.R. § 225.21. The Commission proposes deleting report forms delineated in the current regulation and adopting report forms required by Federal law.

§ 33.31. *Regulations and procedure.*

The Commission proposes modifying this provision to reflect proper statutory references to the Public Utility Code.

§ 33.41. *Bridge or tunnel warnings.*

The Commission proposes modifying this provision to reflect proper references to the American Railway Engineering and Maintenance of Way Association.

§ 33.54. *Federal Safety Regulations*

The Commission proposes amending this provision to delete outdated references to Federal law and to accu-

ately reflect the relationship of state and federal law in the area of safety regulation.

§ 33.61. *Track, cars and four-wheel self-propelled maintenance-of-way cars.*

The Commission proposes deleting this provision due to FRA regulations governing this subject matter. 49 C.F.R. Part 214.

§ 33.66. *Safety glazing in railroad equipment.*

The Commission proposes deleting this provision due to FRA regulations governing the subject matter. 49 C.F.R. Part 223.

§ 33.71—§ 33.77. *Regulations governing passenger train service.*

The Commission proposes deleting these provisions since they are obsolete and no longer applicable to passenger train service provided in Pennsylvania.

§ 33.81—§ 33.84. *Regulations governing track.*

The Commission proposes deleting these provisions due to FRA regulations governing the subject matter. 49 C.F.R. Part 213.

§ 33.101. *Accounts.*

The Commission proposes amending this provision to provide updated references to the appropriate Federal agency, the Surface Transportation Board.

§ 33.102. *Records.*

The Commission proposes amending this provision to provide updated references to the appropriate Federal agency, the Surface Transportation Board.

§ 33.103. *Reports.*

The Commission proposes amending this provision to delete the annual report requirement and to provide updated references regarding the Commission’s assessment report.

§ 33.113. *Training of equipment inspectors.*

The Commission proposes deleting this provision due to FRA regulations governing the subject matter. 49 C.F.R. Parts 172, 215, and 232.

Annex A, proposed regulations, is permitted by Sections 501, 1102, 1103, 1501, 1502, 1504, 1506, 1508, and chapter 27 of the Public Utility Code. Accordingly, under section 501 of the Public Utility Code, 66 Pa.C.S. § 501, and the Commonwealth Documents Law, 45 P. S. §§ 1201—1208, and regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5, we propose to amend the regulations at Chapter 33 as set forth in Annex A; *Therefore,*

*It Is Ordered That:*

1. The Secretary shall submit this order and Annex A to the Office of Attorney General for preliminary review as to form and legality.

2. The Secretary shall submit this order and Annex A to the Governor’s Budget Office for review of fiscal impact.

3. The Secretary shall submit this order and Annex A for review and comment by the designated standing committees of both Houses of the General Assembly and for review and comment by the Independent Regulatory Review Commission.

4. The Secretary shall duly certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

5. Within 30 days of this order's publication in the *Pennsylvania Bulletin*, an original and fifteen copies of any comments concerning this order should be submitted to the Office of the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597 or through the Pennsylvania AT&T Relay Center, (800) 654-5988. The contact person is John Herzog, Assistant Counsel, Law Bureau, (717) 783-3714.

6. A copy of this order shall be served on all commentators to the original Notice.

ROSEMARY CHIAVETTA,  
*Secretary*

**Fiscal Note:** 57-286. No fiscal impact; (8) recommends adoption.

**Annex A**  
**TITLE 52. PUBLIC UTILITIES**  
**PART I. PUBLIC UTILITY COMMISSION**  
**Subpart B. CARRIERS OF PASSENGERS OR PROPERTY**  
**CHAPTER 33. RAILROAD TRANSPORTATION**  
**Subchapter A. GENERAL PROVISIONS**

**§ 33.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

*Bureau*—The Bureau of Transportation and Safety of the Pennsylvania Public Utility Commission.

\* \* \* \* \*

*Camp car or trailer*—[A movable car used for housing railroad employes, including portable housing. The term, if used collectively, means a group of sleeping, dining, kitchen or recreation cars furnished for the use of any one gang or group of employes. Camp cars or trailers shall be of safe construction and suitable for the purposes for which used.]

(i) An on-track vehicle mounted on flat cars used to house rail employees including the following:

- (A) Outfit cars.
- (B) Camp cars.
- (C) Bunk cars.
- (D) Modular homes.

(ii) The term does not include wreck trains.

*Carrier*—Any railroad, railway company or corporation subject to Commission jurisdiction, which operates [a steam or electric railroad] in this Commonwealth.

\* \* \* \* \*

**Subchapter B. SERVICE AND FACILITIES**  
**ACCIDENTS**

**§ 33.11. General.**

[ (a) If an accident occurs in a yard or on a road or division operated jointly or in common by two or more carriers, it shall be reported by the carrier which employs the superintendent who is in imme-

diated charge of the yard, road, or division in question. An accident occurring on a private siding or track of like character shall be reported by the carrier having possession of the locomotive involved or responsible for the subsequent movement in commerce of the railroad equipment involved, or employing the person injured or killed.

(b) ] Each carrier shall submit a report of each reportable accident or incident involving its facilities or operation in this Commonwealth. [ Such reports ] Reports shall be addressed to the Bureau of Transportation and Safety, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, Pennsylvania [ 17120 ] 17105-3265.

**§ 33.12. Reportable accidents or incidents.**

[ (a) ] A reportable accident or incident is one [ arising from the operation of a carrier which results in one or more of the following circumstances: ] as defined in 49 CFR (relating to transportation) and when a carrier is required to report to the Federal Railroad Administration under 49 CFR.

[(1) The death of a person in a train or train service accident or of a passenger or traveller not on a train or on company premises in a nontrain accident, or an employe, unless the employe accident occurs in connection with new construction, in repair shops, engine houses, freight or passenger stations or accident at coal or water stations which do not occur directly as the result of the operation of a train or trains.

(2) Injury to a person other than an employe, in a train or train service accident, or to a passenger or traveller not on a train in a nontrain accident, sufficient to incapacitate the injured person from performing his or her customary vocation or mode of life, for a period of more than one day.

(3) Injury to an employe, unless the accident occurs in connection with new construction, in repair shops, engine houses, freight or passenger stations or accidents at coal or water stations which do not occur directly as the result of the operation of a train or trains, sufficient to incapacitate the injured person from performing his or her ordinary duties for more than three days in aggregate during the ten days immediately following the accident. This paragraph applies to employes on duty and to those classed as not on duty, but does not apply to employes classed as passengers or trespassers.

(4) For the year 1948, damage to railroad property amounting to more than \$250, including the expense of clearing wreck, but no damage to or loss of freight, animals, or property of noncarriers on or adjacent to right of way. For years subsequent to 1948, such minimum amount shall be that adopted by United States Department of Transportation. Casualties, as provided for in this section, shall be included in the report.

(5) All accidents occurring at highway-railroad crossings, at grade, involving contact between engines or trains and highway vehicles or pedestrians, irrespective of the amount of property damage or extent of casualties.

(6) Nontrain accidents involving highway vehicles running into and damaging crossing gates

and other types of protection shall be reported on Monthly Statement Form UCTA-31, or such accidents may be reported individually on Form UCTA-7. ]

§ 33.13. [ Telegraph and telephone ] Telephone reports.

A carrier shall immediately report by telephone [ or telegram shall be made immediately in the event of the occurrence of a reportable accident resulting in fatalities, except as to trespassers, and of train collisions and passenger train derailments, as follows: ] to the Bureau at (717) 787-9732 an accident or incident which requires the carrier to telephonically notify the Federal Railroad Administration under 49 CFR (relating to transportation).

[ (1) A preliminary report shall be submitted by telephone or telegram of a reportable accident resulting in the death of a person, except trespassers, in an accident defined in § 33.12 (relating to reportable accidents) or in the death of any person, trespasser or otherwise, in an accident defined in § 33.12.

(2) A preliminary report shall be submitted by telephone or telegram of a reportable accident involving the collision of an engine or train with another engine or train.

(3) A preliminary report shall be submitted by telephone or telegram of a reportable accident resulting in injury to an employe, except trespassers, in an accident as defined in § 33.12.

(4) A preliminary report shall be submitted by telephone or telegram of a reportable accident resulting from the derailment of any part of a passenger train carrying passengers.

(5) A preliminary report shall be submitted by telephone or telegram of any accident which occurs at any highway-railroad crossing at grade and involves a collision between an engine or train and a bus, taxicab, street car, or loaded gasoline or oil truck or trailer, regardless of whether the accident results in injury to a person or persons and such preliminary report shall furnish the name of the operator and of the owner of the vehicle.

(6) A preliminary report shall be submitted by telephone or telegram of any condition which will result in the obstruction of a main track for a period in excess of two hours. ]

§ 33.14. Accident or incident report forms.

[ Reports shall be made on prescribed accident report forms of the Commission (UCTA-1, UCTA-2, UCTA-7 and Statement Form UCTA-31), as follows:

(1) *UCTA-1.* If no reportable accident has occurred during a month the carrier shall submit a report to that effect on Form UCTA-1. Such report shall be mailed to the Commission on or before the 30th day of the month following.

(2) *UCTA-2.* Reports of accidents to employes, passengers, trespassers, and others and nontrain accidents to employes, passengers, and travellers not on trains shall be made on Form UCTA-2 and shall be filed with the Commission on or before the 30th day of the month following that in which the reportable accident occurred. Form UCTA-2 is so

prepared that it corresponds to the United States Department of Transportation Form FRA F 6180-54, with respect to spacing, and it may be prepared as a carbon copy of the Form FRA F 6180-54. A carbon copy of Form LIBC-344 to the Workmen's Compensation Bureau will be accepted by the Commission in lieu of Form UCTA-2 in filing a report of reportable nontrain accidents involving employes injured and incapacitated for more than three days. Accidents to be reported on Form UCTA-2 do not include those occurring in connection with new construction in repair shops, engine houses, freight or passenger stations, or accidents at coal and water stations which do not occur directly as the result of the operation of a train or trains. Reports shall be filed of accidents resulting in injury to employes while engaged in repairing track, work on or about bridges, telephone, telegraph and catenary wires, and the like or of any similar nontrain accident, if incapacitation is for more than three days in the aggregate during the ten days immediately following the accident. Reportable injuries to employes arising from the operation of section motor or hand cars (equipment chargeable to Account 37, Roadway Machines) shall be reported on Form UCTA-2 or by carbon copy of Form LIBC-344.

(3) *UCTA-7.* Highway-railroad crossing at grade accidents shall be reported on Form UCTA-7, and shall be filed with the Commission on or before the 30th day of the month following that in which the accident occurred. All accidents which occur at public highway crossings and involve damage to crossing gates or flashing-light signals by a highway vehicle which does not collide with an engine or train shall be listed and reported on Form UCTA-31 at the end of each month, or, in lieu of filing such statement, the carrier may file an individual report of each such accident on Form UCTA-7. If report of an accident is submitted on Form UCTA-7, a report of the accident on Form UCTA-2 is not required. Accidents involving highway collisions between section motor cars or hand cars and highway vehicles or pedestrians at public or private highway crossing shall be reported on Form UCTA-7. All accidents which occur at public or private crossings and involve collision between engines or trains and vehicles or pedestrians shall be reported on Form UCTA-7, irrespective of the extent of casualties or the amount of damages to carrier property.

(4) *UCTA-31.* Monthly reports of nontrain accidents which involve damage to crossing gates and flashing-light signals and are defined in § 33.12(a) (relating to reportable accidents) shall be reported on Form UCTA-31 and shall be filed with the Commission on or before the 30th day of the following month. In lieu of filing monthly statements on Form UCTA-31, the carrier, if it so desires, may file individual reports on Form UCTA-7 of such accidents occurring during the month. ]

Carriers shall make reports to the Bureau on forms which the carrier shall file with the Federal Railroad Administration as prescribed by 49 CFR (relating to transportation). Reports shall be submitted to the Commission within the same time period as the reports are required to be submitted to the Federal Railroad Administration under 49 CFR.

### CONSTRUCTION, ALTERATION OR RELOCATION OF CROSSINGS

#### § 33.31. Regulations and procedure.

Each carrier shall comply with [ the provisions of section 409 of the Public Utility Law of 1937 (66 P.S. § 1178), ] 66 Pa.C.S. § 2702 (relating to construction, relocation, suspension and abolition of crossings) and obtain Commission approval of the construction, alteration, or relocation of every public highway and railroad crossing at grade, above grade, or below grade, unless the Commission has given its prior unconditional consent to an abandonment of service or facilities of the line of railroad upon which such crossing or crossings are located.

### SAFETY—BRIDGES, TUNNELS, TRESTLES AND SWITCHES

#### § 33.41. Bridge or tunnel warnings.

(a) Common carriers shall install and maintain warnings of the telltale or tapper type at a reasonable distance on each side of bridges, tunnels, or other obstructions over main tracks, main track sidings, yard and switching tracks in accordance with the specifications of the American Railway Engineering and Maintenance of Way Association or existing standard plans of individual railroads.

\* \* \* \* \*

### OPERATION OF TRAINS

#### § 33.54. Federal safety regulations.

The safety regulations of the United States Department of Transportation [ , specifically the regulations adopted by section 2 of the act of April 11, 1958, Pub. L. 85-375 (45 U.S.C.A. § 9), and by the Safety Appliance provisions of Title 45 of United States Code (45 U.S.C.A. §§ 1—16), ] shall supplement the provisions of this chapter [ , unless such Federal regulations are in conflict with such provisions ] and control when State regulations are preempted. However, a violation of the Federal regulations which is not otherwise a violation of this chapter [ shall ] may not be subject to additional penalty for the same violation if penalized by a Federal tribunal.

### SANITATION AND SAFETY FACILITIES AND EQUIPMENT

#### § 33.61. [ Track cars and four-wheel self-propelled maintenance-of-way cars ] (Reserved).

[ After December 31, 1959, all track cars and four-wheel self-propelled maintenance-of-way cars used in this Commonwealth shall be equipped with all of the following safety equipment and appurtenances:

(1) A windshield of safety glass and of adequate size to provide clear vision of the track and conditions ahead for the operator of the car.

(2) A canopy or top of suitable material for attachment to the car and capable of protecting the occupants of the car from rain, snow, or other inclement weather.

(3) An electric headlight, either permanently attached or a portable light in a fixed bracket, capable of illuminating the roadway ahead a distance sufficient to permit safe operation of the car.

(4) A permanently attached electrically energized red taillight to protect the track car from any following movement.

(5) A manual or automatic windshield wiper sufficient in size to provide vision of the track and conditions ahead for the operator of the car. ]

#### § 33.66. [ Safety glazing in railroad equipment ] (Reserved).

[ (a) Every railroad over which the Commission has jurisdiction, operating within this Commonwealth, shall provide safety glazing in all windows and doors in lieu of other glazing in all cars, cabin cars and locomotives used in the transportation of passengers and employes of the company, including those engaged in the operation of the equipment.

(b) "Safety glazing material," as used in this section, shall be construed to mean any glass or transparent product manufactured or fabricated in such manner as substantially to prevent shattering and flying of the glass or transparent product when struck or broken, and which is approved by the Commission for use in appropriate locations.

(c) One third of all equipment, to which this section applies, of each railroad shall be in compliance with the provisions of this section on or before July 31, 1975; 2/3 of such equipment shall be in compliance by July 31, 1976; and the remaining equipment shall be so equipped on or before July 31, 1977; in any event equipment not in compliance shall not be operated within this Commonwealth after July 31, 1977.

(d) Glazing material used in automotive-type railroad equipment designed for use on land highways shall be in conformance with Federal Rules and Regulations—49 CFR Part 571 (relating to Federal motor vehicle safety standards).

(e) The minimum standards for glazing material used in railroad equipment, other than automotive-type equipment designed for use on land highways, shall be standards described in USAS Z26.1-1966 and in Underwriters Laboratories Standard for Safety UL 972 insofar as it has been adopted as American National Standard designated ANSI SE4.5-1972, with exceptions as noted and for use in locations as set forth in subsection (f).

(f) Reference should be made to the Table 1-Page 11-Grouping of Tests-USAS Z26.1 and numbered paragraphs on pages dated June 2, 1972 ANSI SE4.5-1972:

(1) *Safety Glazing Material for use in windshields for locomotives, railroad equipment and engineman's compartments of multiple unit cars.* Glazing material for use in windshields shall have minimum properties as determined by tests listed in Item 1, Table 1 USAS Z26.1-1966.

(2) *Safety Glazing Material for use in side windows of locomotives, railroad equipment, engineman's compartments of multiple unit cars and in cabin cars.* Glazing materials for use in side windows shall have minimum properties as determined by tests listed in Item 4, Table 1 USAS Z26.1-1966, with the following exceptions:

(i) Rigid plastic material may be coated.

(ii) In lieu of the ball impact test in Item No. 4 USAS Z26.1 the material shall be qualified under Test No. 4 Multiple Impact Test; Test No. 5 Thermal Conditioning Test for Outdoor Use; and Test No. 7 High-Energy Impact Test as described on Pages 5, 6 and 7 dated June 1972 of ANSI SE4.5-1972.

(iii) That material shall be tested for abrasion resistance by testing in the manner described in Test No. 17 USAS Z26.1 except the specimens shall be subjected to abrasion for 300 cycles and the results interpreted on the basis of the arithmetic mean of the percentages of light scattered by the three abraded specimens not exceeding 5.0%.

(3) *Safety Glazing Material for use in passenger car windows and doors except for engineman's compartments in multiple unit cars.* Glazing materials for use in windows and doors shall have the minimum properties as determined by tests listed in Items 3 or 5-Table 1 USAS Z26.1 except that rigid plastics may be coated and shall show abrasion resistance as described in paragraph (2)(iii).

(4) *Marking.* Marking of safety glazing material shall be in accordance with Paragraph 6 USAS Z26.1 and Paragraph 8 on Page 7 dated June 1972 of ANSI SE4.5-1972. ]

[ PASSENGER TRAIN SERVICE ]

§ 33.71. [ Abandonment of service ] (Reserved).

[ A certificate of public convenience evidencing Commission approval of the abandonment of intrastate passenger train service shall be obtained prior to the withdrawal of such service on any line of railroad. ]

§ 33.72. [ Changes in schedules ] (Reserved).

[ An application shall be filed with, and approved by, the Commission prior to the removal, elimination, or substantial change in the schedule of any passenger train, except the following:

(1) Interstate passenger trains which provide no intrastate passenger transportation for compensation between two or more cities, boroughs, or villages in this Commonwealth.

(2) Interstate trains performing intrastate service between two or more municipalities in this Commonwealth, provided the carrier elects to provide temporarily a comparable intrastate service by means of a new intrastate train.

(3) Train removals, eliminations, or schedule changes affecting intrastate passenger service on only one day a week.

(4) Suburban service exempted from this requirement by other provisions of this chapter. ]

§ 33.73. [ Long-distance trains ] (Reserved).

[ Upon application for exemption from intrastate classification, the Commission may exempt from its jurisdiction specified interstate trains making two or more stops in this Commonwealth, upon a showing that adequate intrastate service is available by trains of the same grade operated within a reasonably short time before or after the interstate train. ]

§ 33.74. [ Suburban trains ] (Reserved).

[ Section 33.73 (relating to long-distance trains) does not apply to the operation of trains on suburban runs of less than 35 miles, if the number of trains removed constitutes not more than 10% of the number of trains operated 5 or more days a week in such service on the particular run and the loss of passengers on the run, compared with a like period of the preceding year, exceeds 10%. Such section shall also not apply to the operation of trains on Saturdays, Sundays, and holidays in such service, if the average number of passengers per train on such days does not exceed 60% of the average number of passengers per train for the period Monday to Friday, inclusive, nor to the temporary curtailment of service for periods not exceeding three months to meet seasonal adjustments of traffic demands, if such practice has been effectuated in like periods of prior years to the same or greater extent. ]

§ 33.75. [ Posting of notice ] (Reserved).

[ The public and the Commission shall be given 15 days advance notice of any changes in intrastate passenger train service, except those trains subject to the filing of application. Notice to the public shall be posted at a conspicuous location at each station affected. ]

§ 33.76. [ Additional trains ] (Reserved).

[ Nothing contained in §§ 33.71—33.77 shall prevent rail carriers from operating extra passenger trains, extra sections of scheduled trains, or the scheduling of additional passenger trains. If prior notification to the Commission of temporary or trial operation of such additional schedule is given, Commission approval as set forth in §§ 33.71—33.77, will not be required for the removal or termination of such temporary or trial service, or schedule. ]

§ 33.77. [ Saving clause ] (Reserved).

[ Nothing contained in §§ 33.71—33.76 shall preclude the Commission from instituting a proceeding upon complaint or upon its own motion concerning the adequacy of passenger train service rendered by any carrier in accordance with the provisions of the Public Utility Law (66 P. S. §§ 1101 et seq.), nor shall it preclude any railroad carrier from voluntarily filing with the Commission an application for Commission approval of the removal, elimination, or substantial change in any passenger train prior to the preparation of timetables effectuating such changes. ]

[ TRACKS ]

§ 33.81. [ Track alignment ] (Reserved).

[ (a) All track shall be constructed with curvature so limited or with tangent track so placed between reverse curvature that lateral displacement of the car couplers with the center axis of any car does not exceed 13°. Crossovers between tracks and turnouts shall be similarly constructed. Tracks designed to accommodate two coupled cars, each with trucks spaced 70 feet between truck centers and with couplers 29 inches from the center of the pivot to the pulling face of the knuckle, shall be deemed in compliance with this regulation.



(b) If, in any particular case, exemption from any of the requirements in this section is deemed necessary by the carrier concerned, the Commission may grant application of such carrier for such exemption, provided the application is accompanied by a full statement of existing conditions and the reason why such exemption is sought. Any exemption so granted shall be limited to the particular case covered by application.

(c) Subsections (a) and (b) do not apply to repairs, renewals, or maintenance of track, but nothing in this section shall be construed as restricting the rights of carriers to decrease track curvature. ]

§ 33.82. [ Track anchors ] (Reserved).

[ No track shall be released to rail service prior to the proper installation of sufficient anchors, including the reinstallation or replacement in a proper manner of all anchors removed or disturbed in the course of any track repair or maintenance. ]

§ 33.83. [ Tracks undergoing maintenance ] (Reserved).

[ Each common carrier railroad in this Commonwealth shall immediately issue instructions to all supervisory personnel engaged in the repair, renewal, or replacement of tracks, to the effect that if necessary to leave the main track in other than satisfactory condition for the passage of trains at authorized speed, the supervisor in immediate charge shall provide full protection and immediately notify the Superintendent of Transportation or other authorized official specified by the company of that fact by telephone message or by wire, and the Superintendent of Transportation or such other designated official shall forthwith issue appropriate orders restricting the use of such track to safe slow speeds until the track is restored to satisfactory condition. ]

§ 33.84. [ Track inspection ] (Reserved).

[ In the case of all tracks over which there are regularly scheduled passenger movements and all tracks currently being used for the movement of freight trains if the authorized speed is 20 miles an hour or greater, the following regulations shall apply to track inspection by all common carrier railroads operating within this Commonwealth.

(1) Each common carrier railroad having trackage subject to this section shall provide that such inspection be made by a track foreman or equally qualified employe of the railroad company involved, and that such employe shall not be required to inspect more than 100 miles of track per day.

(2) Each common carrier railroad having trackage subject to this section shall provide the track patrolman or track inspector assigned to such inspection with a standard numbered form with detachable receipt, on which such employe shall indicate the date of inspection, specific tracks inspected, and their location including the district, division or region; such forms shall require a listing of defects found and in need of correction, with respect to track stability and alignment, track surface, gauge, ties and rail fastenings, welding, insulated joints, track anchors and bolts, frogs and switches, guardrails, drainage and such other con-

ditions as may be deemed appropriate by the carrier concerned. Such form shall be completed by the track patrolman or inspector for each trip, in multiple; the original shall be submitted to his immediate supervisor with a copy to such other personnel as the carrier may direct, and retained by both carrier and patrolman or inspector for a period of not less than 6 months and be available to the Commission or its staff for review upon request.

(3) Each common carrier railroad having trackage subject to this section shall assign a supervisory employe above the rank of foreman to be responsible for the inspection required by this section within his assigned area, which area shall be clearly designated.

(4) Tracks subject to the provisions of this section shall be inspected not less than twice each week.

(5) All switches shall be inspected on foot at least once each month.

(6) If track cars or other vehicles, including off-track vehicles, are used for such twice-weekly inspections, they shall be operated at such speed as shall insure adequate inspection, but not in excess of 5 miles per hour at all railroad crossings, highway crossings and switches, or adjacent structures where guardrails are in use.

(7) If track cars or other vehicles are used, only the track upon which such vehicles are traveling shall be considered as inspected.

(8) In all inspections of highway crossings, particular attention shall be given to the detection of unsafe conditions resulting from loose planking or obstructed flangeways, or other conditions which may endanger the safety of train movements and the traveling public.

(9) In the monthly on-foot inspection of switches, particular attention shall be given to the detection of unsafe conditions resulting from open or defective switch points, loose or missing bolts in heel filler blocking, and defective guardrails or frogs. Switches not in territories utilizing automatic signals or centralized traffic controls shall be operated at least once each month to insure that they are in proper working order.

(10) If twice-weekly inspections are required, such inspections shall not be made on consecutive days.

(11) If trains carrying passengers are to be operated over tracks not subject to this section, such tracks shall be inspected within 48 hours prior to the operation of such trains, except in case of emergency.

(12) If the track inspection reveals improper alignment, improper cross level, faulty gauge, loose ties, defective switch points, or any condition which, in the judgment of the individual inspecting the track, creates an unsafe condition, such employe shall take immediate appropriate action for the safety of operations. If the condition presents an immediate hazard, a Slow Order should be issued or, if necessary, the track taken out of service. The inspector should continue to report the condition until it is corrected. ]

**ACCOUNTS, RECORDS AND REPORTS**

**§ 33.101. Accounts.**

Each carrier authorized to operate in this Commonwealth shall keep and record its accounts and records in conformity with the systems of accounts for railroad companies, with text, definitions and instructions as embodied in the currently effective classifications prescribed for railroad companies by the [ Interstate Commerce Commission ] Surface Transportation Board.

**§ 33.102. Records.**

[ (a) ] Each carrier shall preserve its records in conformity with the effective [ Regulations to Govern the Destruction of Records of Railroad Companies (49 CFR 1220), prescribed by the Interstate Commerce Commission ] regulations of the Surface Transportation Board.

[ (b) Copies of the regulations may be obtained from the Pennsylvania Public Utility Commission. ]

**§ 33.103. Reports.**

[ (a) A carrier shall file with the Pennsylvania Public Utility Commission each year an annual report showing its financial status and operating position. The annual report as prescribed and furnished by the Commission, shall be filed properly completed, signed and notarized, by March 31, covering the preceding calendar year.

(b) A railroad shall be classified for annual report filing purposes in accordance with Interstate Commerce Commission classification based on the average gross annual revenues, intrastate and interstate combined, for the 3 years preceding, as follows:

(1) **Class I Railroads**—revenues of \$50 million or more—after applying the prescribed railroad revenue deflator formula in 49 CFR (relating to transportation).

(2) **Class II Railroads**—revenues of less than \$50 million but in excess of \$10 million after applying the prescribed railroad revenue deflator formula in 49 CFR.

(3) **Class III Railroads**—revenues of \$10 million or less after applying the prescribed railroad revenue deflator formula in 49 CFR.

(c) ] A carrier shall file with the Commission each year an assessment report[ , on Form GAO ] on a form provided by the Commission showing gross Commonwealth intrastate revenues for assessment purposes. The assessment report shall be filed by March 31 covering the preceding calendar year.

**MISCELLANEOUS PROVISIONS**

**§ 33.113. [ Training of equipment inspectors ] (Reserved).**

[ Each common carrier railroad operating within this Commonwealth shall intensify its training of equipment inspectors, particularly with respect to equipment assigned to transport material subject to regulation by the Office of Hazardous Materials, United States Department of Transportation, and shall require, if feasible, a written record by the equipment inspector of all cars inspected. ]

[Pa.B. Doc. No. 11-1790. Filed for public inspection October 21, 2011, 9:00 a.m.]